

House Engrossed Senate Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-sixth Legislature  
Second Regular Session  
2004

**CHAPTER 216**

# **SENATE BILL 1311**

AN ACT

AMENDING SECTIONS 12-1362 AND 12-1363, ARIZONA REVISED STATUTES; RELATING TO  
PURCHASER DWELLING ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1362, Arizona Revised Statutes, is amended to  
3 read:

4 12-1362. Dwelling action; jurisdictional prerequisite;  
5 insurance

6 ~~A. If a purchaser files a dwelling action without first complying with~~  
7 ~~this article, on application by a party to the action, the court may stay the~~  
8 ~~action for ninety days to allow the parties to comply with this article.~~

9 ~~B. Absent a showing of good cause, the court shall stay a multiunit~~  
10 ~~dwelling action for ninety days to allow the parties to comply with this~~  
11 ~~article.~~

12 ~~C. Absent a showing of good cause, the court shall not stay a dwelling~~  
13 ~~action~~

14 A. EXCEPT with respect to claims for alleged defects involving an  
15 immediate threat to the life or safety of persons occupying or visiting the  
16 dwelling, A PURCHASER MUST FIRST COMPLY WITH THIS ARTICLE BEFORE FILING A  
17 DWELLING ACTION.

18 B. IF A SELLER PRESENTS A NOTICE RECEIVED PURSUANT TO SECTION 12-1363  
19 TO AN INSURER THAT HAS ISSUED AN INSURANCE POLICY TO THE SELLER THAT COVERS  
20 THE SELLER'S LIABILITY ARISING OUT OF THE DESIGN, CONSTRUCTION OR SALE OF THE  
21 PROPERTY THAT IS THE SUBJECT OF THE NOTICE, THE INSURER MUST TREAT THE NOTICE  
22 AS A NOTICE OF A CLAIM SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY OF  
23 INSURANCE. AN INSURER IS OBLIGED TO WORK COOPERATIVELY AND IN GOOD FAITH  
24 WITH THE INSURED SELLER WITHIN THE TIME FRAMES SPECIFIED IN THIS ARTICLE TO  
25 EFFECTUATE THE PURPOSE OF THIS ARTICLE. NOTHING IN THIS SUBSECTION OTHERWISE  
26 AFFECTS THE COVERAGE AVAILABLE UNDER THE POLICY OF INSURANCE OR CREATES A  
27 CAUSE OF ACTION AGAINST AN INSURER WHOSE ACTIONS WERE REASONABLE UNDER THE  
28 CIRCUMSTANCES, NOTWITHSTANDING ITS INABILITY TO COMPLY WITH THE TIME FRAMES  
29 SPECIFIED IN SECTION 12-1363.

30 Sec. 2. Section 12-1363, Arizona Revised Statutes, is amended to read:

31 12-1363. Notice and opportunity to repair

32 ~~A. At least ninety days before filing a dwelling action, other than~~  
33 ~~a multiunit dwelling action, the purchaser shall give written notice by~~  
34 ~~certified mail, return receipt requested, to the seller specifying in~~  
35 ~~reasonable detail the basis of the dwelling action.~~

36 ~~B. A. In a multiunit~~ AT LEAST NINETY DAYS BEFORE FILING A dwelling  
37 action, the purchaser shall serve the seller, together with the complaint,  
38 a written notice GIVE WRITTEN NOTICE BY CERTIFIED MAIL, RETURN RECEIPT  
39 REQUESTED, TO THE SELLER specifying in reasonable detail the basis of the  
40 dwelling action. The notice in a multiunit dwelling action involving alleged  
41 defects that are substantially similar in multiple residential units may  
42 comply with this section by providing a reasonably detailed description of  
43 the alleged defects in a fair and representative sample of the affected  
44 residential units.

1        ~~C.~~ B. After receipt of the notice described in subsection A ~~or B~~ of  
2 this section, the seller may inspect the dwelling to determine the nature and  
3 cause of the alleged defects and the nature and extent of any repairs or  
4 replacements necessary to remedy the alleged defects. The purchaser shall  
5 ensure that the dwelling is made available for inspection no later than ten  
6 days after the purchaser receives the seller's request for an  
7 inspection. The seller shall provide reasonable notice to the purchaser  
8 before conducting the inspection. The inspection shall be conducted at a  
9 reasonable time. The seller may use reasonable measures, including testing,  
10 to determine the nature and cause of the alleged defects and the nature and  
11 extent of any repairs or replacements necessary to remedy the alleged  
12 defects. If the seller conducts testing pursuant to this subsection, the  
13 seller shall restore the dwelling to its condition before the testing.

14        ~~D.~~ C. Within sixty days after receipt of the notice described in  
15 subsection A OF THIS SECTION, the seller shall send to the purchaser a good  
16 faith, ~~written~~ response to the purchaser's notice by certified mail, return  
17 receipt requested. The response may include an offer to repair or replace  
18 any alleged defects, to have the alleged defects repaired or replaced at the  
19 seller's expense or to provide monetary compensation to the purchaser. The  
20 offer shall describe in reasonable detail all repairs or replacements that  
21 the seller is offering to make or provide to the dwelling and a reasonable  
22 estimate of the date by which the repairs or replacements will be made or  
23 monetary compensation will be provided.

24        ~~E.~~ D. If the seller does not provide a written response to the  
25 purchaser's notice within sixty days, the purchaser may file a dwelling  
26 action without waiting for the expiration of ninety days as required by  
27 subsection A of this section ~~or a stay, if entered, shall be lifted to allow~~  
28 ~~the action to proceed.~~

29        ~~F.~~ E. Within twenty days after receipt of the seller's offer made  
30 pursuant to subsection ~~D~~ C of this section, the purchaser shall provide a  
31 good faith, ~~written~~ response. A purchaser who accepts the seller's offer  
32 made pursuant to subsection ~~D~~ C of this section shall do so in writing by  
33 certified mail, return receipt requested. A purchaser who rejects the  
34 seller's offer made pursuant to subsection ~~D~~ C of this section shall respond  
35 to the seller in writing by certified mail, return receipt requested. IF THE  
36 SELLER PROVIDES A SPECIFIC FACTUAL BASIS FOR THE OFFER, the response shall  
37 include the SPECIFIC FACTUAL basis for the purchaser's rejection of the  
38 seller's offer and ~~may include a~~ THE PURCHASER'S counteroffer, IF  
39 ANY. Within ten days after receipt of the purchaser's response, the seller  
40 may make a best and final offer to the purchaser in writing by certified  
41 mail, return receipt requested.

42        ~~G.~~ F. The following are not admissible in any dwelling action:

43        1. A purchaser's good faith notice given to the seller pursuant to  
44 subsection A ~~or B~~ of this section.



1           2. A seller's good faith response or offer made pursuant to subsection  
2 ~~D~~ C of this section.

3           3. A purchaser's good faith response made to a seller's offer pursuant  
4 to subsection ~~F~~ E of this section.

5           4. A purchaser's good faith counteroffer to a seller's offer made  
6 pursuant to subsection ~~F~~ E of this section.

7           5. A seller's good faith best and final offer made pursuant to  
8 subsection ~~F~~ E of this section.

9           ~~H. The following are admissible in any dwelling action:~~

10           ~~1. A purchaser's failure to provide a good faith notice to a seller~~  
11 ~~as required by subsection A or B of this section.~~

12           ~~2. A purchaser's failure to allow a reasonable inspection requested~~  
13 ~~by a seller as required by subsection C of this section.~~

14           ~~3. A purchaser's failure to provide a good faith, written response~~  
15 ~~to a seller's offer as required by subsection F of this section.~~

16           ~~4. A seller's failure to respond in good faith to the purchaser's~~  
17 ~~notice as required by subsection D of this section.~~

18           ~~I. G. A purchaser may amend the notice provided pursuant to~~  
19 ~~subsection A or B of this section to include alleged defects identified in~~  
20 ~~good faith after submission of the original notice during the ninety-day~~  
21 ~~NINETY DAY notice period. THE seller shall have a reasonable period of time~~  
22 ~~to conduct an inspection, if requested, and thereafter the parties shall~~  
23 ~~comply with the requirements of subsections C, D and F B, C AND E of this~~  
24 ~~section for the additional alleged defects.~~

25           ~~J. H. A purchaser's written notice made pursuant to subsection A of~~  
26 ~~this section or an amended notice made pursuant to subsection I G of this~~  
27 ~~section tolls the applicable statute of limitations, including section~~  
28 ~~12-552, until ninety days after the seller receives the notice or for a~~  
29 ~~reasonable period agreed to in writing by the purchaser and seller.~~

30           ~~K. I. Subject to Arizona rules of court, during the pendency of a~~  
31 ~~dwelling action the purchaser may supplement the list of alleged defects to~~  
32 ~~include additional alleged defects identified in good faith after filing of~~  
33 ~~the original dwelling action. The court shall provide the seller a~~  
34 ~~reasonable amount of time to inspect the dwelling to determine the nature and~~  
35 ~~cause of the additional alleged defects and the nature and extent of any~~  
36 ~~repairs or replacements necessary to remedy the additional alleged~~  
37 ~~defects. The parties shall comply with the requirements of subsections C,~~  
38 ~~D and F B, C AND E of this section for the additional alleged defects.~~

39           ~~L. J. The service of an amended notice of alleged defects during the~~  
40 ~~pendency of a dwelling action shall relate back to the original notice of~~  
41 ~~alleged defects for the purpose of tolling applicable statutes of~~  
42 ~~limitations, including section 12-552.~~

1 M. K. By written agreement of the seller and purchaser, the time  
2 periods provided in this section may be extended. ~~By order of the court, the~~  
3 ~~time periods provided for in subsections C, D and F of this section may be~~  
4 ~~extended.~~

5 N. L. For the sale of a dwelling that occurs within the statutory  
6 period set forth in section 12-552, the escrow agent, as defined in section  
7 6-801, shall provide notice to the purchaser of the provisions of this  
8 section and sections 12-1361 and 12-1362. Nothing in this subsection creates  
9 a fiduciary duty or provides any person or entity with a private right or  
10 cause of action or administrative action.

APPROVED BY THE GOVERNOR MAY 10, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2004.